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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 725

VANCE JULIAN, TRUSTEE IN BANKRUPTCY OF ROBY C. WOODY, d/b/a WOODY MOTOR COMPANY, BANKRUPT,
Petitioner,

vs.

THE FARMERS BANK OF CLINTON, MISSOURI,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW

The opinion of the Eighth Circuit Court of Appeals appears at pp. A1-A28 inclusive of the Petition for Writ of Certiorari (hereinafter "Pet.").

QUESTION PRESENTED

Has petitioner shown any grounds for granting a writ of certiorari?

STATUTES AND RULES INVOLVED

Rule 19, Rules of the Supreme Court of the United States:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons which will be considered:
>
> * * *
>
> "b. Where a court of appeals has rendered a decision in conflict with a decision with another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, * * * as to call for an exercise of this court's power of supervision."

Rule 10(c), Rules of the U. S. Court of Appeals for the Eighth Circuit:

> "Rule 10(c). *Supplement to Printed Record by Appellee.* In case the appellee or respondent shall be of the opinion that the printed record submitted by the appellant or petitioner is inaccurate or omits essential portions of the entire record, he may file and serve with his answering brief a separately printed supplement to the printed record, carefully indexed, containing such additional portions of the record as he deems essential for consideration by the court in deciding the case.

The evidence contained in a printed supplement may be in the form in which it appears in the original record unless the appellee or respondent elects to reduce it to narrative form."

STATEMENT

Respondent is dissatisfied with Petitioner's Statement (Pet. pp. 11-19). It is grossly violative of this Court's Rule 23(1)(e) calling for a "concise statement of the case containing the facts material to the consideration of the questions presented." It repeatedly goes outside the record by referring to alleged facts which do not appear in the record. Further it attempts to argue matters both inside and outside the record, rather than confining itself to the record and simply stating facts which appear therein. Respondent calls this Court's attention to paragraph No. 4 of its Rule 23 which states that failure to present with "accuracy, brevity and clearness, whatever is essential to a ready and adequate understanding" of the relevant issues will be sufficient reason for denying the petition.

For our Statement, we incorporate herein the statement of facts of the Eighth Circuit Court of Appeals which appears in its Opinion (Pet. pp. A2-A6).

ARGUMENT—REASONS FOR DENYING WRIT

1. In that portion of his argument denoted No. 1(a) and (b) (Pet. pp. 20-25), petitioner basically contends that the record of the entire bankruptcy proceedings, stretching out over some six years, constitutes the "entire evidence" which, he states, the Eighth Circuit did not have before it when it concluded that most of the Referee's findings were "clearly erroneous."

First, it is clear from the record that the "entire evidence" concerning this matter involving respondent was in fact before the Eighth Circuit. The District Court's opinion specifically states that each of the four petitions for review, of which this matter was one, is "separate from the others although all relate to orders entered in the same bankruptcy proceeding." (Pet. p. A29). The District Court states it is entering "separate judgments . . . in regard to each petition for review."

Second, if the "entire evidence" was not before the Eighth Circuit, petitioner has no one to blame but himself; he cannot correct the alleged omission at this stage. Under Rule 10(c) of the Rules of the Eighth Circuit Court of Appeals, it was petitioner's duty to designate any additional matters which he felt were omitted from the Record (Vol. I) filed by respondent and which he felt should be part of the record in this case. Petitioner did in fact file a Supplemental Record (Vol. II) which was in addition to the Record filed by Respondent (appellant below). Although the Supplemental Record was extensive, it does not include what petitioner now claims is the "entire evidence." He now wants another opportunity to add to the record.

Third, what petitioner now claims is the "entire evidence" contains matters irrelevant to the issues of this case, and was developed in proceedings to which respondent was not a party, of which respondent was never notified, and in which respondent did not participate. All for the excellent reason that said proceedings had nothing to do with the subject-matter of the cause now before the Court and which was ruled upon by the Eighth Circuit. Certain principles are basic to Anglo-Saxon jurisprudence, i. e., the right of cross-examination; the right to offer controverting evidence; the right to object to inadmissible evidence; the right to participate in a hearing involving one's interests;

and the right of representation by counsel. It is essential that respondent have been a party to the various proceedings which petitioner would now have this Court consider. There is nothing in the record to indicate respondent was a party to those other proceedings which petitioner now claims constitute the "entire evidence." Respondent did not participate in those hearings. Petitioner steps outside the record when he claims that what he states is the "entire evidence" was developed in "joint hearings." There is nothing in the record to indicate respondent was allowed to—or did—participate in such "joint hearings." There was no evidence common to respondent and the other parties involved, and there was no agreement to allow such evidence to apply to this matter. This is made crystal-clear by the District Court's own statement that each of the four petitions for review constituted a separate and distinct matter, entirely different from each of the other three.

A good example of what petitioner is here attempting is his recitation at pages 19 and 24 of his Petition of certain "facts" or "evidence." (Pet. p. 19, Paras. Nos. 5 and 6; p. 24). He cites these "facts" to a "supplemental stipulation" to which respondent was not a party and which is not part of the Record before the Eighth Circuit. Is respondent to be bound by a stipulation to which it was not even a party? Petitioner would have this Court believe so.

We respectfully submit the Eighth Circuit properly applied the "clearly erroneous" rule to the "entire evidence" which it properly had before it, and which constituted all the evidence relevant to the cause it was considering.

Further, petitioner fails to demonstrate why the alleged failure to consider the "entire evidence" should be grounds for this Court's granting a writ of certiorari in this cause.

2. Petitioner's argument on the four questions which he has designated Nos. 2(a), (b), (c) and (d) (Pet. pp. 25-36) is reargument of what he said in the court below. It deals solely with what petitioner now alleges are errors of law. Such supposed errors of law were allegedly committed in ruling on the particular set of facts involved here. The Eighth Circuit's reasoning appears in its opinion (Pet. pp. A7-A28) and needs no defense or further elaboration here. The grounds for its decision are lucidly and logically set forth. They are based on ample, clear precedent and achieved justice in this case. We need not argue them again. Petitioner does not present any grounds which this Court has stated, both in its Rule 19 and in its decisions, will be considered in its decision as to the granting of a writ of certiorari. Petitioner is simply rearguing matters which the Eighth Circuit has decided in its opinion; he demonstrates no reason to grant certiorari. He would have this Court review the Eighth Circuit's rulings of law which are limited to this distinctive fact situation.

This Court has stated its use of writs of certiorari is designed to serve two purposes: To secure uniformity and to decide questions of great importance. *Magnum Import Co.* v. *Coty*, 262 U.S. 159, 43 S.Ct. 531, 67 L.Ed. 922; *In re Woods*, 143 U.S. 202, 12 S.Ct. 417, 36 L.Ed. 125. In *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 99 L.Ed. 897, 75 S.Ct. 614, this Court stated, at p. 73:

> ". . . we have considered anew whether this case is one in which 'there are special and important reasons' for granting the writ of certiorari, as required by Supreme Court Rule 19.
>
> "This rule, formulated 30 years ago, embodies the criteria, developed ever since the Evarts Act of 1891, by which the Court determines whether a particular case merits consideration, with due regard to the proper

functioning of the limited reviewing power to which this Court is confined, decisively restricted through the creation of the intermediate Courts of Appeals and more largely confined by the Judiciary Act of 1925. In illustrating the character of reasons which may be deemed 'special and important', the Rule refers to cases.

* * *

"A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of particular litigants. (Magnum Import Co. v. Coty, 262 U.S. 159, 163, 67 L.Ed. 922, 924, 43 S.Ct. 531; see also Address of Mr. Chief Justice Vinson, before the American Bar Association, September 7, 1949, 69 Sup. Ct. v, vi; Address of Mr. Chief Justice Hughes, before the American Law Institute, May 10, 1934, XI Proceedings American Law Institute 313.) 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic."

We respectfully submit petitioner has not demonstrated in his petition for a writ of certiorari any "special and important reasons" why this Court should undertake a review of the Eighth Circuit's decision.

Petitioner also attempts to argue the facts instead of simply stating them; in addition, he attempts to argue alleged facts outside the record. Somewhat inconsistently (Pet. pp. 22, 28), petitioner argues for the "inherently improbable" rule which he states should be applied here. Such "inherently improbable" rule implicitly concedes the total lack of evidence to justify the findings for which petitioner argues. If anything, this argument confirms the

Eighth Circuit's refusal to swallow what it felt were the "clearly erroneous" findings of the Referee in Bankruptcy.

Petitioner cites no grounds for invoking this Court's discretion to grant a writ of certiorari. It is respectfully submitted the petition should be denied.

3. In regard to petitioner's argument on those four questions numbered 3(a), (b), (c) and (d) (Pet. pp. 36-49) in petitioner's brief, petitioner again argues at great length questions of law and alleged errors, supposedly committed by the Eighth Circuit, rather than showing to this Court grounds for the requested granting of a writ of certiorari. As stated above, the Eighth Circuit's grounds for decision are set forth in its Opinion. They will not be reargued here. Petitioner is simply rearguing the case which has already been decided. He does not demonstrate the applicability of any grounds for exercising this Court's discretion in granting a writ of certiorari. In considering a petition for writ of certiorari, this Court will not merely review rulings of law without a demonstration that the supposed errors are in conflict with the decisions of this Court or with those of other Circuits. Rather, certiorari will be granted only for the grounds stated either in Rule 19 or in prior decisions of the Court. Petitioner has not demonstrated that any such grounds exist for the granting of a writ of certiorari. Petitioner cites no question of general importance, only limited issues of rulings of law which he fails to demonstrate are at variance with other Circuits or with the rulings of this Court.

CONCLUSION

For the reasons and authorities cited above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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